G. R. S. IX-5]

Previous references.

File No. 223/08

1908.

Serial No. 1

(S. R.

Later references.

S. R 2060/10 Sl 1 and 2
December 1916

GENERAL AND REVENUE SECRETARIAT.

Serial No. 1

Part B for December 1916

SUBJECT.

Claim to the Toddy Excise revenue of Sarvamangalam Yeramangalahalli yedatore TK.

W D 88—GPB—50,000—24-7-16

A. Jamakiran
12. 3. 17

G.R.S.11] 190 8

GENERAL AND REVENUE SECRETARIAT

(884)

NOTES.

File No. 223-08

FILE HEADING.

Claim to the Coorg Rice procured for Servants Agree Veerenalegamalal village Yedatore Taluk

From The Rice Comte

No. 8739 Dated 24/3/08 Received 27/3/08

Diary No. 347 Enclos. Spare Copies { Serial No. 1

BRIEF ABSTRACT OF LETTER.

With reference to G.O. No. 3117-9/884 dt. 02-6-08 Rice Comte plaines certain principles that have to be observed in deciding the Rice claims.

NOTES AND ORDERS.

1 In deciding Rice claims to Coorg growers, Rice Settlement is taken as the starting point. Where it is conclusive clear, relief will be allowing the

NOTES—First sheet

GPB—30,000—3-4-07.

G. R. S. 12]
General and Revenue Secretariat.

File No. 223 of 1908

Serial No.

Rule 18 of 1907

the right of disallowing it is referred to. It is also considered whether there has been or no enjoyment of the privileges for 12 years previous to 1892-93. (rule 19)

Rule 19 of 1907

2 If the right has been disallowed by the Khasi Selfgovernment its 50yrs unauthorized enjoyment previous to 1892-93 is also taken into consideration to allow the right for a limited period following the principle enunciated in the late Chief Comrs Proc. of 8th Oct. 1873.

Rule 20

3 Khasi Selfgovernment is generally adopted and in exceptional circumstances Khasi Selfgovernment is overruled.

4 When the Khasi Selfgovernment is doubtful & not clear the claim has to be gone into with reference to Khasi custom & record &c.

5 In the present claim the Khasi Selfgovernment was clear & the enjoyment

NOTE—Contn. sheet.

GPB—50.000—18-5-08

Serial No.

for 12 yrs period 1882-93
was also in a way favoured
the passing in practice of
the Govt of Mr Jameson's order
No 3117-9-8M 6-02 4 which
the Excise Comm has taken
objection in the letter under
disposal viz replacing the
reduction prior to 1892-93
represented excise revenue
because the classes was
otherwise sufficiently protected
under rule 8

6 Each class is peculiar
in itself & deserves consideration
on its own merits so far
as the classes are more than
are hitherto disposed of, no two
cases are alike in every respect
the letter under disposal
seems to require no orders & it
may be filed.

Sd/- The Excise Commissioner's
letter is based on two
assumptions, the correctness
of which can not be

NOTE—Contn. sheet.

GPB—50,000—18-5-08

Serial No.

unreservedly accepted, viz:-

(1) that Toddy Excise is Coextensive with the right of "vending" Toddy and

(2) that what is now called Tree Tax was included under "Shop rent" in the Earlier days - Especially in the days of the Farming System between the years 1892-93 & 1896-97.

I would invite a reference to page 21 of the Printed Memorandum up where a more Satisfactory Classification of the Several ingredients of Excise Revenue is given viz

(1) The rent for the Grove

(2) The Shop rent and

(3) The "true Tax".

The first was analogous to rent for land and represented the return for the ownership of the trees

The Second represents the value of the monopoly of vending Toddy and the third is a tax imposed by the State

In this view, Mr Sparke's Contention that Shop Tax and tree tax were formerly one and the same

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Serial No.

does not hold good. On the contrary, the true tax — though in reality a late creation — should logically go into the grove rent, because ~~it is a tax~~ its incidence is to be on the toddy consumed, which again depends directly on the number of trees tapped.

11 & 12 There is therefore nothing necessarily wrong in the ~~Sadasiva~~ sentence quoted by the Excise Commr. in the order disposing of the claim of the Zamindar of Gurramgunta. ~~The Board's action is clear.~~

12 th. Month. There is an appearance of illogicality in our reading by a sort of fiction a new meaning into old terms. But this cannot be helped. If the theory that the value of the right of vending toddy alone constitutes the toddy excise is correct as contended by the Excise Commissioner then no Sawaramgam Village which does not own a shop can possibly be entitled to toddy revenue. But this admittedly is not the case. From considerations of policy the Govern-

Page 18 of the letter under disposal

~~and~~ and if this theory is rigorously worked out

NOTE—Contn. sheet.

GPB—50.000—13-5-08

G. R. S. 12]
General and Revenue Secretariat.

SR File No. 223 of 1908

6.

Serial No.

have decided to admit Claims Even where a Shop does not Exist — as is abundantly clear from the ~~and~~ Special provisions made to meet such Cases in the rules of 2nd August 1907.

Please See also discussions on p. 33 of the printed Checks P. SR

20th May 09. SR

Secretary.

NOTE—Contn sheet.

GPB—50 000—17-3-07

G.R.S. 13]

8142-23-08

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

4 The Excise Commr's argument proceeds upon the assumption that in the absence of a Shop in any Dram Village, the persons of that Village has no right of Vending and Consequently no right to excise revenue from Vending. Rule 13 is a complete refutation of this argument. Whether a Shopless Dram Village shd be allowed excise revenue from Vends is a question that admits of discussion I remember having discussed it once, in the course of writing on a remand Claim. But taking the rules as they stand I think the decision of Govt contained in their order of 18-1-09 is correct. The Excise Commr has not adduced any proof to show that what was enjoyed by this Frontier Dram under was only free rent & cannot include what Govt was entitled to charge for the right of sale. The admission of the Shop at the time of the Dram

N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

GPB—45,000—19-5-08.

Dear Mr Krishnadas,

13 As you deal with this case criminally, and have also studied the rules, will you please let me have your opinion also?

Yours
[illegible]

S. 12]
eral and Revenue
Secretariat.

8/2 File No. 223 of 1908

Serial No.

15 I agree with Asst Secretaries
Dewan Srinivasaraya & Krishna Rao that
the order of 10-1-09 does not require
reconsideration.
Dewan's 8/IV
2.8.09
2/5/09

16 The point raised by the Excise
Commr is a most important
one, vitally affecting the in-
terests of both Govt & Inamdars. There is a great
deal of force in the argu-
ments brought forward in
his letter.

17 Broadly speaking the
ordinary Inamdar would be
entitled only to the tree rent
on the toddy trees of his
village. The Privileged
Inamdar should, as
opined by the Dewan
when he was 1st Councillor,
get the actual revenue
accruing in his village viz
shop rent (if there is a shop).
Tree rent & Tree tax on

Note—Contn sheet.

GPB—50 000—17-3-07

Serial No.

the Toddy trees in his village
there is no reason why he
should get the tree tax on
toddy trees tapped for his
Arrack shop outside his village
the latter tree tax is an
item of excise revenue
belonging to Government
and not to the privileged
Maniar in whose village
the toddy is consumed.

(8) I hold that the right to vend
toddy in the village is not a
necessary condition to the
granting of the privilege of
excise revenue. If such
privilege is conceded or sufficient ground
privileged Maniar would be
entitled to get the tree tax
as well as tree rent on toddy
trees in his own village.
If this view is accepted, the
orders passed by GOI in this
case would appear to be correct

(9) It is necessary to recast
the rules which as they stand
at present are confusing

NOTE—Contn. sheet.

GPB—50.000—13-5-08

Serial No.

and perplexing and
seem to favor the Mamdar
under in that they get
which they never demand
of any tree tax at 1½ R
a tree on trees tapped
in such alienated villages
for use of shops in their
villages. The result in
general cases would be
that the so called seiss
revenue to the Mamdar
would far outweigh his
income from land & other
sources!

Vijiaraghavan
22/7/09

Sd
22/7/09

Devan)
1761
26.7.09

20 This file only contains question of interpretation of the rules. The lines on which orders are to be passed & not the facts of each case require to be indicated.

Revised) 6.11.16

21 Submitted for orders—
1st & 2nd numbers)

Result on 22/11.

328
24.11.16.

22/11/16

22nd The file may be recorded
Mouse of Mamdar under appeals

NOTE—Contn. sheet.

GPB—50,000—13-5-08

G. R. S. 12]
General and Revenue Secretariat.

(12

FR File No. 223 of 1908

Serial No.

felt 6 years ago.

23. Such case is being dealt with and old rule accordingly.

Submitted for Hon'ble Member

24. Submitted to Hon'ble Member

8/11/27. 11

1/12

25. As no further action is necessary, may this file be closed at this stage and recorded? Submitted for orders.

5/12/16.

5/12

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Go 8739

Office of the Excise Commissioner
in Mysore

Bangalore, dated 24th March 1909.

From

H.Sparkes Esquire,

Excise Commissioner in Mysore.

223-08

(1)

To

S.Chendrasekhara Iyer Esquire, B.A.,B.L.,
Secretary to the Government of His
Highness the Maharaja of Mysore,
General and Revenue Departments

Sir,

Adverting to Government order No.Fl.3117-9/S.R.61-02-4, dated the 18th January 1909 allowing the Inamdar's claim to the toddy Excise revenue of Sarvamnya Yeremanganahalli in the Yedetor Taluk, on the ground that the Inamdar enjoyed the right to lease out his grove and realised revenue in the form of grove farm rent, I have the honor to state that though I am reluctant to interfere with the liberal concession showed by Government to the Inamdar, as I am afraid that the principle enunciated in the above cited order may give room on the one hand to the recommendation of unnecessary concessions in respect of Inamdars whose claims have yet to be settled and on the other hand to the preferring of appeals for the reconsideration of those claims that have been disallowed, I am forced to submit the following representation for such consideration and orders of Government as may be deemed necessary

2. In the case under question the claim rests on the determination whether it was the Excise on toddy or merely the lease amount of the produce of the trees that the Inamdar was enjoying. The Government have held that it was part of the Excise revenue from toddy that the Inamdar was enjoying. They say as follows:-

"But one thing is clear that if the Inamdar had the right to lease out his grove and realised any revenue in the

the form of grove rent, such revenue included what is now called tree-tax. Tree-tax is one of the two items shop-rent and tree-tax which together constitute Excise revenue from toddy."

In the first place it must be constantly kept in view tha the determination of what is toddy Excise and what is tre rent in this case, refers to the period prior to 1892-93. Either the farmingnor the Tree-tax system has anything to do with the question at issue. In the next place it has also to be remembered that the Aiyan Farms, Aiyam Kumkin Farms, Angadi Farms and Grove Farms had their birth and death during the Farming system only. They did not exist either prior to 1892-93 or subsequent to 1896-97.

3. The first question that has to be answered in this cor nection is, prior to 1892-93, what was the right of an Inamdar in respect of date trees or groves in his ~~own~~ Inam village, irrespective of the fact whther he was a privileged or an ordinary Inamdar. The answer is that, as is now the case, pric to 1892-93 also, an Inamdar, whther privilege or ordinary, ha the right to lease out his date trees or groves and derive a revenue therefrom. For this authorities are not wanting as will be seen from the following extracts:-

"6.- The toddy tax deserves particular notice; the Inam-dars should understand that they cannot levy a licer fee for the sale of this liquor in their villages. they may collect rent for the use of the ground on which the shop is kept by licensed Government dealer <u>They may also lease out their date or palm trees to the Government Abkari contractor.</u> The proceeds deri-ed under this head should, like the revenue from the Mohatarfa, earth-rate iron forges, be included in the assets. The moment the Inamdar vends toddy as liquor, he commits a breach of Abkari laws, and thereby renders himself liable to punishment" - vide Proceedings of the Inam Commissioner of Mysore No.16, dated 13th February 1871.

'5.- No compensation is necessary under existing orders for resuming the privilege of vending toddy from trees situated in private villages, as their ---- holders are at perfect liberty to lease them out to the Government contractor or utilize them in any way except by vending liquor without a license from Government". Vide order No.3697-Rev.30, dated 8th October 1873 of the Chief Commissioner of Mysore.

"2.- . . . . . But every Inamdar is entitled to a rent for the use by the Government contractor of the toddy trees in his land without reference to his right to toddy revenue under his Sannad".-Vide Government order Camp No.1969-78, Dated 2nd December 1887.

"3.- Of Inamdars (in which term for the purposes of the subject under consideration, Kayamguthadars are included) there are- 1st the ordinary Inamdars whose rights in respect of date trees on their holdings are on the same footing as those of kandayam raiyats in those Goverment villages into which the Survey settlement has been introduced. They may cut down their trees but cannot tap them. It is only Government, or a lessee from the Goverr -ment of the right to sell toddy, that can draw toddy with the land-owner's consent. The considera -tion paid for such consent is rent for the date trees".

There are also-2ndly, the privileged Inamdars to whom the State right of selling toddy has been conceded by competent authority. These privileged Inamdars, besides being like ordinary Inamdars entitled to the rent for their date trees, are also entitled to receive the Excise (the value of the selling right) on toddy consumed within the

the limits of their villages, whther this toddy is the produce of their own date trees or is imported from outside the limits of their villages".

Para 4 "5.(b)- Where the farm consists of the right of drawing toddy ~~is~~ in specified groves without shops being attached to them, that is, with freedom for the farmer to sell the toddy drawn by him to other farmers who have acquired from Government the right to sell to the public.

Para 9 "9.- The toddy revenue of class B is entirely rent and wholly payable to the ordinary Inamdar interested"

Para 15 "15.- In toddy revenue of class B there is only rent for toddy and to this the privileged Inamdar like an ordinary Inamdar is entitled. It should therefore be wholly paid to him". Vide note by the then Chief Secretary T.Ananda Rao Esquire.

Para 17 "6.- An "Ordinary Inamdar" is one who, like an ordinary occupant of Government land in a settled village is entitled to the toddy trees standing in his village, and has therefore a right to demand payment for the privilege of tapping the same".

- A "Privileged Inamdar" is one to whom the state right of selling toddy has been conceded by authority. In addition to the tree rent to which he is entitled in common with an "ordinary Inamdar" he is also entitled to the "Excise rent" or value of the drawing and selling right"- Vide draft rules prepared by C.Srinivasaiengar Esquire, --- Secretary to Government, Revenue Department.

Para 23 24 25 - An "Ordinary Inamdar or Kayamguthadar" is one to whom Excise revenue has not been so alienated, and who like an ordinary occupant of a Government land in a settled village, is entitled to the toddy-yielding trees standing in his village; and has therefore a right to demand payment of tree-

tree-rent for the trees tapped in his village, or to lease such trees for the manufacture of toddy to the licensee of shops for such rate of tree - rent as may be agreed to between them".

Pg 75

"8. A Privileged Inamdar or Kayamguthadar" is one to whom Excise revenue has been so alienated and who is accordingly entitled to it in addition to the tree rent to which he is entitled in common with an "Ordinary Inamdar or Kayamguthadar"- Vide draft rules rpepared by P.N.Purnaiya Esquire, Excise Commissioner in Mysore.

Instances may be multiplied but suffice it to say that if the Inamdar had the right to lease out his grove and himself realized any revenue in the form of grove farm-rent such revenue, apart from any other circumstances, cannot be siad to include what is now called tree-tax. Such revenue pure and simple when there is no other evidence to show that it included anything else, is nothing more nor less than tree-rent. Take a case where an Inamdar or for the matter of that an owner of extensive occupied land possesses a big date grove containing several thousands of trees. If he leases out his trees for drawing toddy by a recognised Government contractor and selling it in shops situated outside his jurisdiction, and derives revenue therefrom, can such revenue be deemed to include tree-tax under the present phraseology or Excise revenue under the old phrasiology? The right to lease a date grove vests in the Inamdar quite independently of his right to the toddy Excise and the exercise of such a right by itself does not in the least go to support his claim, if any, to the toddy Excise. The only restriction in leasing out such groves is that it should be leased out to a Government contractor.

4. The next point for consideration is, prior to 1892-93, what sort of enjoyment would constitute the enjoyment of toddy Excise. For an answer to this question we must go to the reference and find out what was understood by toddy excise in those days.

days. It was nothing short of the right of vending toddy in the village. The following extracts conclusively prove the correctness of this statement.

"3.- The toddy revenue consists of two distinct items, viz- (1) an Excise duty and (2) a rent for toddy trees. The Excise duty is paid for the privilege of selling toddy which is an Excise article under a special law. The rent is in the nature of a payment to the land-lord as the price of the produce of the trees standing on his land. It is not possible to recognize that any Inamdar has any right to excise duty unless it can be shown that the same is vested in him by the express terms of the sannad or other document issued by competent authority. But every Inamdar is entitled to a rent for the use by the Government contractor of the toddy trees in his land without reference to his right to toddy revenue under his sannad".- Vide Government Proceedings Camp No.1969-78, dated 2nd December 1887.

There are also-2ndly, the privileged Inamdars to whom the state right of selling toddy has been conceded by competent aithority. These privileged Inamdars, being like ordinary Inamdars, entitled to the rent for their date trees, are also entitled to [illegible] receive the Excise(the value of the selling right) on toddy consumed within the limits of their villages, whther this toddy is the produce of their own date trees or is imported from outside the limits of their villages".

8.- . . . . . Claims of Inamdars to be regarded as "Privileged", i,e, to exercise the right of selling their toddy in their village or to receive a payment as Excise for outside toddy sold within the limits of their villages should be carefully scrutinized and investigated . . . . . .

If any payment has been made, care should be taken to ascertain the precise purpose for which the payment was made. Unless a shop existed in the Inam village and the payment made on account of such shop, the payment cannot be regarded as payment for the ~~exercise~~ Excise by the Government contractors of the Inamdar"s excise right. In other words, for an Inamdar to be regarded and treated as privileged, the Inam Superintendent ~~shou~~ should have recognised his right to Abkari revenue, and there should have been actual enjoyment of such revenue, and what was enjoyed should distinctly be excise ~~revenue~~ right.

"20.- . . . . . Broadly speaking the value of toddy at foot of the tree from which it is drawn may be regarded as Rent, and the additional value which it acquires at the place of consumption may be regarded as Excise". Vide note by Chief Secretary T.Ananda Rao Esquire.

Here I may observe that in justice to the Inamdar I have been more liberal and have always been holding that the Inamdar may be considered to have enjoyed the toddy excise if he had leased out the right of vending toddy in his village and had derived revenue therefrom from the Government contractor irrespective of the fact whther such contractor actually worked a shop in the Inam village or not.

"4.- Excise rent is the value of the Government right of ~~dra~~ drawing and selling toddy".

"5.- Tree-rent is the price chargable for allowing the Govt. or its lessee to tap the trees situate in Inam villages including Kayamgutha.

"7.A.- "Privileged Inamdar" is one to whom the state right of selling toddy has been conceded by authority. In addition to the tree-rent to which he is entitled in common with an "Ordinary Inamdar", he is also entitled to the "Excise Rent" or value of the drawing and sellin right.

"8.- . . . . . But where it has conceded such right, the question of the bona fide enjoyment of Abkari revenue as excise rent as contradistinguished from tree-rent should be gone into". Vide draft rules rpepared by C.Srinivasaiengar Esquire, Secretary to Government Revenue Deptt.

So therefore, if the Inamdar is to be said to have enjoyed the toddy Excise prior to 1892-93 it is essential to show that he was leasing out the right of vending toddy in his village . Nothing short of this can be excepted as enjoyment of toddy -- Excise prior to 1892-93. The exercise of the mere right of leasing out his date groves can under no circumstance mean that he was enjoying the toddy excise.

5. It was under the Farming system which was in force from 1892-93 to 1896-97 that what are called "Grove Farms" were sold by Government, so that in the purchase money thereof was included both the rent on account of the drawing and removing toddy and tree-rent for the trees tapped. Such was not the case either prior or subsequent to this system. The grove farm of the Farming system was the peculiar creation of Government and it is the rules and restrictions under which the Grove Farm was sold which made it to include the two items of rent on account of the drawing and removing toddy and tree-rent for the trees tapped. Even during the Farming system, the revenue from Grove Farms in alienated villages not separately sold as an independent "Grove Farm" but which was leased out by the owner himself under private arrangements with the Government contractor, did not include the aforesaid two items. This is plain from rule 3 of the rules of the 2nd August 1901. The Farming system has its own peculiarities and what is applicable to this system cannot apply either to what obtained prior to 1892-93 or to the tree tax system. As I have already said we are concerned only with the period prior to 1892-93.

6. There was no sale by Government of Grove Farms either

prior

prior to 1892-93 or subsequent to 1896-97. Before 1892-93 the shops were sold by Districts as they are now sold individually. The District contractor possessed the right of drawing toddy from trees standing on Government bunjar lands and in occupied lands or alienated villages with the consent of the owners and after paying such rent for the trees as may be settled between themselves, in exactly the same way as the present toddy shop-keeper possesses the right of drawing toddy in assigned groves and from trees in occupied lands or alienated villages with the consent of the owners and after payment of such rent as may be agreed upon between themselves. The revenue which an Inamar got prior to 1892-93 by leasing out his date groves to Government contractors is exactly the same as the Inamdar now gets by leasing out his date groves to Government contractors. In both the cases it is tree-rent and nothing more. The toddy excise revenue proper prior to 1892-93 consisted of nothing more nor less than the rent paid for the right of vending toddy. No doubt this privilege included the right to tap date trees as aforesaid. The Excise revenue from toddy now consists of shop-rent and tree-tax but prior to 1892-93 tree-tax was merged in shop-rent. The position in the pre and post Farming periods is exactly the same except that in the former case the only revenue was shop-rent whereas in the latter the shop-rent was split up into the two items of shop-rent amd tree-tax. If tomorrow the tree-tax were to be abolished and the shops were sold as was done prior to 1892-93, the tree-tax will again merge in the shop rental and in nothing else.

7. From what I have said above, I believe I have made it clear that were an Inamdar to say that he was in the enjoyment of the Excise revenue from toddy prior to 1892-93 he must prove that he was leasing out the right of vending toddy in his village and nothing less.

8. For the foregoing reasons I beg to submit that if, prior to 1892-93, an Inamdar had the right to lease out his grove and he himself had realised any revenue from the Government contrac-

tors

(10)

contractors ~~on~~ in the form of grove Farm rent, it does not follow that such revenue includes what is called tree-tax. During those days what is now called tree-tax always went with the ~~sh~~ shop-rent and not with anything else. Nothing less than the exercise of the right by the Inamdar of leasing out to the Government contractor the privilege of vending toddy in the village can be called the enjoyment of the Excise ~~rev~~ revenue from toddy prior to 1892-93.

I have the honor to be,

Sir,

Your most obedient servant

Excise Commissioner in Mysore.

Compd